IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE KURIAN JOSEPH
&
THE HONOURABLE MR. JUSTICE A.K.BASHEER

MONDAY, THE 8TH JANUARY 2007 / 18TH PAUSHA 1928

AS.No. 356 of 1994()

OS.151/1992 of PRINCIPAL SUB COURT,ERNAKULAM
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APPELLANT:

1.M/S.QUADRANT ENGINEERING CORPORATION,
JANATHA JUNCTION, PALARIVATTOM, COCHIN-25.

2.MR.N.GOPALAKRISHNAN, S/O.ARUMUGHAN PILLAI,
PROPRIETOR OF M/S.QUADRANT ENGG. CORPORATION,
JANATHA JUNCTION, PALARIVATTOM.

BY ADV. SRI.K.R.KURUP
SRI.C.R.SYAMKUMAR

RESPONDENTS:

1.INDIAN ROADWAYS CORPORATION LTD.,
A COMPANY REGISTERED UNDER THE COMPANIES ACT
1956, HAVING ITS REGD.OFFICE AT 1, SUNYAT SEN STREET,
CALCUTTA-700 012 WITH ITS BRANCHES AT
ERNAKULAM AND OTHER PLACES.

2.M/S.SPACO CARBURETTORS (INDIA) LTD.,
A COMPANY REGISTERED UNDER THE COMPANIES ACT,
HAVING ITS REGISTERED OFFICE AT 901, PRASAD CHAMBERS,
OPERA HOUSE, BOMBAY 400 004.

BY ADV. SRI.V.O.JOHN
SRI.JOSEPH THOMAS,
SMT.NARAYANIKUTTY CHETTOOR
SRI.JIMMY JOHN VELLANIKARAN
SRI.R.SUDHIR

THIS APPEAL SUITS HAVING BEEN FINALLY HEARD
ON 08/01/2007, THE COURT ON THE SAME DAY DELIVERED THE
FOLLOWING:

KURIAN JOSEPH & A.K.BASHEER, JJ.

A.S. No.356 of 1994

Dated 8th January, 2007.

J U D G M E N T

Kurian Joseph, J.

This appeal is at the instance of defendants 1 and 2 against the judgment and decree in O.S.151/92 on the file of the Sub Court, Ernakulam. Plaintiff is the first respondent and the third defendant is the second respondent. It is the case of the plaintiff that the third defendant had booked two consignments of goods as per consignment notes dated 13.7.1987 and 23.11.1987 for a total value of Rs.1,88,223.92 from Pune through M/s.Indian Roadways Corporation for delivery to the first defendant at Kochi. The second defendant, it is alleged that took delivery of the goods without paying and retiring the documents from the bank and caused loss to the plaintiff. It was contended that the second defendant admitted the allegation and promised to pay the amounts covered by the consignment notes with interest and freight charges totalling to Rs.2,13,099.92 as loss and damages to the Indian Roadways Corporation. An amount of Rs.40,000/- was paid in cash and cheques for the balance were issued to the Indian Roadways Corporation. One cheque for Rs.35,000/- was honoured and the rest were dishonoured. Hence the suit for the balance of Rs.1,38,099.92. It is the stand of the plaintiff that all the

rights, interests, assets and liabilities of Indian Roadways Corporation were transferred to and vested with the plaintiff company, viz., Indian Roadways Corporation Limited as per Ext.A1 order of the High Court of Calcutta passed under the provisions of the Companies Act, 1956. The defendants contended that the plaintiff did not have any legal right to file the suit, the signatory of the plaint is incompetent to verify and sign the plaint on behalf of the plaintiff company and that the defendants had discharged their liability to the erstwhile Indian Roadways Corporation in terms of the agreement. The plaintiff did not examine any witness. However, Exts.A1 to A36 were marked with the consent of the defendants. The trial court held that the defendants could not prove the discharge and hence the suit was decreed with costs.

2. Learned counsel for the appellants contends that the plaintiff has no right to file the suit since there is no privity of contract between the plaintiff and the defendants 1 and 2. It is further contended that in any case, no loss has been caused to the plaintiff since the loss if any is caused to the third defendant. It is brought to our notice that the third defendant had instituted a civil suit-Civil Suit No.1077/90 before the City Civil Court, Pune and had obtained a decree against the appellants and the plaintiff during the pendency of the appeal. If that be so, it is not necessary for the plaintiff to pursue

O.S.151/92. In that view of the matter, it is not necessary to consider the other contentions regarding limitation, discharge etc. In view of the above developments, it is fairly clear that the plaintiff has no surviving grievance since the aggrieved third defendant (second respondent herein) has already safeguarded its interest as per the judgment and decree in Civil Suit No.1077/90 before City Civil Court, Pune. Apparently so only, it is reported that the respondents have no current instruction in the matter, despite several postings. Hence we allow the appeal. The judgment and decree in O.S.151/92 are set aside. In the facts and circumstances of the case, the parties will bear their respective costs.

KURIAN JOSEPH, JUDGE.

A.K.BASHEER, JUDGE.

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KURIAN JOSEPH & A.K.BASHEER, JJ

A.S. NO.356 OF 1994

J U D G M E N T

Dated 8th January, 2007.